Supreme Court, U. S.
FILED
NOV 28 1980
MICHAEL RODAK, JR., CLERK

80-916

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA
Respondent

vs

William "Billy" DiNardi, Sr.
Petitioner

October Term
1980

APPENDIX

William DiNardi, Sr.
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and

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of counsel

FILED
SEP. 30, 1980
JOHN P. HEHMAN

80-5012

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v. ORDER

WILLIAM "BILLY" DINARDI, SR.,
Defendant-Appellant

Before: KEITH and MERRITT, Circuit Judges, and WISEMAN, District Judge*

Defendant-Appellant appeals his conviction on charges of conspiracy to make, possess and sell counterfeit currency and actually possessing counterfeit currency. He was sentenced to 5 years and 10 years on the charges respectively by Judge Freeman of the Eastern District of Michigan.

Defendant alleges two grounds for reversal.

First, he contends that admission in evidence of the fact that an anonymous telephone call occurred in conjuction with 1) testimony that the receiver of the call related the sub-

stance of the conversation with the anonymous party to a third person, 2) testimony as to the subsequent actions of the third person amounts to either hearsay or prejudicial error within the rule of United States v. Finazzo 288 f2d 175 (6th Cir. 1961). However, such testimony is not hearsay because it is not offered for the truth of the communication discussed in the conversation. See United States v. Campbell, 466 F2d 529, 531 (9th Cir. 1972). Indeed in this case nothing at all was related regarding the out-of-court statements, hence the Finazzo rule is not applicable. See Enlow v. United States, 239 F2d 887 (10th Cir. 1957).

Defendant-Appellee also contends that the district judge used the wrong standard in ruling on his Motion for Acquittal. He draws attention to the following exchange at trial:

> "Mr. Viviano:....However, I would also point out to the court that the testimony has to generate belief beyond a reasonable doubt, and that's the question that the Court decides....
> "THE COURT" (Interposing) No, I don't de-

> cide that. I only decide whether there is substantial evidence."

He contends that the court applied a different standard than required by law. However, upon a reading of the above exchange in the context of the rest of the transcript, it is clear that the court appled the correct standard here. In our view, the court decided whether there was substantial evidence for a reasonable minded jury to support a conclusion of defendant's guilt beyond a reasonable doubt. See Burks v. United States, 437 U.S. 1 (1978) and United States v. Green, 548 F2d 1261 (6th Cir. 1977).

Accordingly, the judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

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